IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

W.A.No. 172 of 2007

AGAINST THE JUDGEMENT IN W.P.(C)NO.18122/2006 Dated 05/12/2006
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APPELLANT/3RD RESPONDENT:

JOMI C.NIDHEERI,
NIDHEERIKAL VEEDU, ELANJI P.O.,
ERNAKULAM DISTRICT.

BY ADV. SRI.BIJI MATHEW

RESPONDENTS/PETITIONER:
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1. ELANJI GRAMA PANCHAYAT, REPRESENTED
   BY ITS SECRETARY, ELANJI, ERNAKULAM DISTRICT.

2. THE STATE OF KERALA, REPRESENTED
   BY THE CHIEF SECRETARY TO GOVERNMENT,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

3. THE TRIBUNAL FOR LOCAL SELF GOVERNMENT
   INSTITUTIONS, THIRUVANANTHAPURAM.

4. M/S.LUXURY SAND KERALA (PRIVATE) LTD.
   REPRESENTED BY ITS MANAGING DIRECTOR,
   SRI LUKE ANTONY KOCHERI, CV/122, RIVERIRA RETREAT,
   THEVARA P.O., KOCHI-13.

5. THE KERALA STATE POLLUTION CONTROL
   BOARD, THIRUVANANTHAPURAM.

R1 BY ADVOCATES S/SRI. K.JAYAKUMAR & P.B.KRISHNAN
R2 & 3 BY GP SHRI P.A. SALIM
R4 BY ADV. SRI.N.NANDAKUMARA MENON
R5 BY ADV.SRI.M.K.CHANDRAMOHAN DAS

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 06/02/2007, ALONG WITH W.A. NO. 208 OF 2007, THE COURT ON 05/03/2007 DELIVERED THE FOLLOWING:

J.B. KOSHY and T.R.RAMACHANDRAN NAIR, JJ.

W.A. Nos. 172 and 208 of 2007

Dated this the 5th day of March, 2007

Judgment

Fourth respondent, a private limited company, proposed to set up an Artificial Granite and Sand Manufacturing Unit with quarrying operation in Elanji Grama Panchayat and purchased 22.31 acres of land within the area of the appellant panchayat and a portion of the above land is to be used for the above unit. It approached various statutory authorities, namely, Geologist, District Industries Centre, Revenue Authorities, District Medical Officer, District Officer of the Ground Water Department, Chief Controller of Explosives, Director of Mining and Geology and various authorities for permission. All of them granted permits and licences. Pollution Control Board also granted quarrying permit subject to certain conditions for initial setting up of the plant. They have also stated that they will give the final consent only after the trial run. The then President of the appellant panchayat committee granted permission for construction of the factory building. Appeal against the above decision was

filed before the Tribunal for Local Self Government Institutions by the local people. The tribunal remanded the matter after considering the reconsideration of the matter on recommendation from the Grama Sabha. After obtaining expert opinion, Panchayat decided not to grant permission to the fourth respondent for the establishment of Rock Crusher and Artificial Granite Sand Manufacturing Unit at Koorumala by Ext.P7 letter dated 25.1.2006. Against Ext.P7 order, statutory appeal was filed before the Tribunal for Local Self Government Institutions, Thiruvananthapuram. By Ext.P9 order, Tribunal by an interim order allowed the fourth respondent to complete the building and also to construct the road through his property on condition that he undertakes before the Panchayat to remove the building if the ultimate finding went against him. Thereafter, by Ext.P10 order dated 27.5.2006 after hearing all the interested parties and after considering the various contentions and documents, it was held that impugned decision of the Panchayat is unsustainable and liable to be set aside in view of the consent granted by the Pollution Control Board and the District Medical Officer and the suggestions of the District Officer of the Ground Water Department and the

appellate authority directed the Panchayat to issue licence to the fourth respondent for the establishment of the factory incorporating a condition prohibiting extraction of ground water from its area except for drinking purposes and subject to complying with the conditions imposed by the Pollution Control Board and District Medical Officer. This order was challenged by the Grama Panchayat in the writ appeal. Third respondent in the writ petition who is stated to be the convenor of Koorumala Samrakshana Action Council filed W.A. No.172 of 2007 has not challenged the order of the tribunal before this court in Writ Petition. Even though objections were raised about the maintainability of the appeal filed by the third respondent in the writ petition, subsequently, Grama Panchayat filed W.A. No.208 of 2007.

2. Preliminary ground taken by the Grama Panchayat was that the appellate tribunal has no power to set aside the order of the tribunal considering rule 18 of the Tribunal for the Kerala Local Self Government Institutions Rules, 1999 (herein after referred to as 'the Rules') read with section 271 (5) of the Kerala

Panchayat Raj Act, 1994 (hereinafter referred to as 'the Act').

3. It is the contention of the appellants that only procedural defects can be cured by the tribunal and, at the maximum, it can remand the matter and the tribunal has no power to decide the matter on merits. Sub-section (1) of section 271-S of the Act reads as follows:

> "271S. Constitution of Tribunal for local Self Government Institutions:- (1) The Government shall constitute a Tribunal for every district or for more than one district, to consider and dispose of the appeal or revision filed against the decisions of the Local Self Government Institutions under section 276 of this Act and Section 509 of the Kerala Municipality Act, 1994."

Sub-clause gives the same power as vested in the civil court when trying suit under the Code of Civil Procedure with regard to certain Acts. It is also mentioned that the proceeding before the tribunal shall be deemed to be proceeding within the meaning of sections 193 and 228 of the Indian Penal Code. Section 276 of the Act authorises appeal to be filed before the tribunal. It also further provides that appeals pending before other authorities

also shall be handed over to the tribunal. Rule 18 of the Rules reads as follows:

> "18. Directions to the Local Self Government Institutions:- If the Tribunal, on considering the petition and connected records, is satisfied that any notice or order issued or action taken by the Village Panchayat, Municipality or its Secretary as the case may be, is not issued or taken in accordance with the procedure under, the Panchayat Act or the Municipality Act or the rules made thereunder it may direct such Village Panchayat or Municipality or the Secretary to issue notice or order or to take action afresh complying the procedure under law."

Rule 18 only provides, if there is any procedural irregularity, the tribunal can remand the matter and direct the Secretary to issue notice and comply with the procedure and pass fresh orders. Then, the above rule will not restrict the power of the tribunal in hearing the appeal and passing orders on merit. Rule 16 provides issuance of notice to the counter petitioners before passing orders. Rule 19 speaks about hearing to be granted by the tribunal and power of the tribunal to

decide the matter ex parte. Rule 20 of the Rules reads as follows:

> "20. Order of the Tribunal:- (1) The Tribunal shall, after considering the petition and connected records of, if there is trial of the parties, after the completion of such trial, issue an order recording its decision on the petition:
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> Provided that if the Tribunal thinks it necessary so to do, it may declare in advance a date to issue such order and shall issue the order on that date.
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> (2) An order of the Tribunal shall be in writing and shall bear the signature and seal of the Tribunal on it."

A reading of the statutory provisions would show that the appellate tribunal is vested with the power to hear the appeal on merit and can decide the matter like any other appellate authority and tribunal's order is not restricted regarding the procedural matters only. Therefore, tribunal can hear and dispose of the matter on merits as a full-fledged appeal and objection by the petitioners to that effect is not tenable.

4. Next question is whether the tribunal's decision is correct or not. It is true that environment is to be protected and strict measures have to be adopted

for the protection of environment as otherwise it will affect the right to live guaranteed by article 21 of the Constitution of India. At the same time, developmental activities are also necessary, but, while making developmental activities, it is the concern of the parties and courts to see that pollution is minimised and environment is protected. For that precautionary measures have to be done. In this case, all statutory authorities passed orders favourable to the petitioner. Ext.R4 shows that Division Officer, Fire and Rescue Services, gave permission to install machineries subject to certain conditions. It was directed that only domestic water requirement of workers and staff may be met by available ground water and that too should be limited to 2000 liters per day and the water requirement for industrial unit may be met from the surface water bodies or rivers in the far off area. Various other conditions were also prescribed and petitioner filed undertaking to fulfill those conditions. Geology Department has also granted permission subject to certain conditions by Ext.R4 (8). Ext.R4 (2) is the certificate issued by the Divisional Officer, Fire and Rescue Services Department. Ext.R4 (3) is issued by the

Pollution Control Board with ten conditions which include provision for rain water harvesting and various measures to restrict pollution. No objection certificate was given by the District Magistrate for issuing licence under the Explosives Act by Ext.R4 (6). No objection certificate was given by the Tahsildar by Ext.R4 (5). District Medical Officer of Health granted certificate by Ext.R4 (7). The appellate authority in appeal filed by the petitioners considered the entire matter and appeal was dismissed and issuance of quarrying permission was affirmed as can be seen from Ext.R4 (9). Permission of the Ground Water Department is Ext.R4 (10). A reading of various exhibits would show that all statutory authorities have granted the permission. Pollution Control Board's order further makes it clear that permission is granted for construction etc. and it also stated that final consent will be given after trial run only after satisfying that no pollution or environmental problems are caused. There will be periodical checking and if any pollution is caused, petitioner will have to stop the activities. Thus, fourth respondent has taken all the measures to prevent pollution. All the statutory authorities have given permission and various conditions

were prescribed and if any of the conditions prescribed are violated, appellants will be free to raise it before the statutory authorities as the conditions prescribed by the statutory authorities have to be complied with by the fourth respondent before starting operation as well as after starting operation. The learned single Judge considered the entire matter and found that no interference is required by this court under article 226 of the Constitution of India. We fully agree with the conclusions reached by the learned single Judge. Hence, we dismiss the writ appeals.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

vaa

J.B. KOSHY AND
T.R.RAMACHANDRAN NAIR, JJ.

W.A. Nos.172 & 208/2007

Judgment

Dated: 5th March, 2007